IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

HARI RAM @ PAPIYA V. THE STATE OF RAJASTHAN.

D. B. CRIMINAL APPEAL NO.161/2002

Under Section 374 (2), Cr.P.C.,against
the Judgment dated 01-02-2002,
passed by Mr.C.N.Mathur, RHJS,
the learned Additional Sessions Judge,
(Fast Track), Hanumangarh
in Sessions Case No.137/2001

DATE OF JUDGMENT :::: 16-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. D.L.Mothsra, for Appellant.
Mr. J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

This appeal has been preferred by accused appellant against the judgment of Additional District & Sessions Judge

(Fast Track), Hanumangarh dated 01.02.2002 in Sessions Case No.137/2001.

The prosecution case was initiated on submission of report by Balwant Singh S/o. Indra Singh to Police Station, Hanumangarh Junction. A typed report was submitted by Balwant Singh on 28.07.2001, at about 9.15 a.m., stating therein that he is resident of Ward No.1, Sureshiya, Hanumangarh Junction. Hari Ram s/o.Daulat Ram is his neighbor, who usually quarrel with his wife. Yesterday night he heard high pitch noises and when he came out from his house, Kamla and Hari Ram were quarreling with each other. He slept in the night and when he woke up in the morning, Kamla was found dead on her cot. Hari Ram killed Kamla and ran away from the place of occurrence. On the basis of the said report, FIR was registered, bearing No.498. The case was registered under Section 302 of IPC, thereafter, investigation was conducted by the police.

Police submitted challan under Section 302 of IPC before the Court of Chief Judicial Magistrate, Hanumangarh. The case was committed to the court of the Additional District & Sessions Judge, Hanumangarh, from where it was transferred to the trial Court.

The trial Court framed charges against the accused under Section 302 I.P.C. accused denied charges and claimed trial.

Prosecution produced 12 witnesses and exhibited 44 documents. The statement of the accused was recorded under Section 313 of Cr.P.C.

The trial Court convicted accused under Section 302 of IPC and sentenced to life imprisonment with penalty of Rs.100/-, in default, to undergo three months' rigorous imprisonment.

Learned counsel appearing for the appellant urged that the appellant has been wrongly implicated in the matter as he was not there on the place of occurrence. It was further submitted that complainant in his court statement stated that he had not given any complaint to the Police. It was thus, submitted that when there is no complaint and evidence against the appellant, then there was no reason for the trial Court to convict the accused under Section 302 of IPC. It was lastly submitted that circumstantial evidence available on record does not connect accused with the crime. Thus, it was prayed that the judgment of the trial Court be set aside.

Per contra, learned Public Prosecutor submitted that it is on the complaint of the complainant – Balwant Singh that FIR was registered, though said Balwant Singh as PW 1 thereafter turned hostile but he had not denied his signature on the complaint. The evidence produced by the prosecution connects accused with the crime. It was further urged that the accused was last seen on the place of occurrence and as he has failed to give any

explanation of death of his wife, the trial Court has rightly arrived at the conclusion about his guilt after considering circumstantial evidence available on record. The learned Public Prosecutor further submitted that at the instance of the accused, his blood stained clothes as well blood stained weapon were recovered. It was, therefore, prayed that the judgment of the trial Court may be maintained.

We have considered the rival submissions of the learned counsel for the parties and carefully gone through the material available on record.

Prosecution case was initiated with the submission of report by Balwant Singh, stating the fact that last night, he heard high pitch voice of accused and his wife quarreling with each other and, in the morning, Kamla was found dead. The said witness, in his court statement, pleaded ignorance about the person caused murder. The said witness further stated that he had not given complaint to the police, rather same was prepared by the police and was not even read over to him. It was only his signature which was taken, otherwise facts mentioned therein were not stated by him. The said witness turned hostile. Even PW 2, PW 3, PW 4, PW 5, PW 8 and PW 11 were declared hostile.

The learned trial Court relied on the circumstantial evidence which was found sufficient to connect appellant accused with the crime.

PW 10 Dr. R. K. Gupta stated that he had prepared Post Mortem Report (Ex.P-38). The deceased sustained injuries from sharp weapon and out of six injuries sustained by the deceased, one injury on the front side of neck was grievous in nature and sufficient to cause death. PW 9 Narendra Godara stated that typed report (Ex.P-1) was submitted by Balwant Singh on 28.07.2001. Based on the said report, FIR was registered, containing signature of Balwant Singh. Said witness had recovered blood stained bed sheet and pillow. The accused was arrested and on information of the accused, weapon "Kassi" was recovered. Blood stained clothes of accused were also recovered, articles so recovered, were sent for FSL report. Wherein weapon "Kassi", shirt and pant of accused were found to contain human blood on it.

The learned trial Court considered the matter in the light of the material available on record. As per the initial report of Balwant Singh, accused was lastly seen on the place of occurrence. The signatures on the report as well as on FIR have not been denied by said Balwant Singh and submission of report by Balwant Singh has been corroborated by PW 9 Narendra Godara. In defence nothing has been stated about absence of accused from the place of occurrence, even accused in his statement under Section 313 Cr.P.C. has not stated that he was away from the place of occurrence. In absence of such a

statement presence of accused in night at his residence becomes natural. During the course of cross-examination of PW 9 Narendra Godara, defense suggested that accused was not available on the scene of occurrence as he had gone out of station with the truck, though neither the accused had stated any fact about his absence from the scene of occurrence, nor any such evidence was led by the defense. Therefore, accused was last seen on the scene of occurrence was found proved.

The second circumstantial evidence taken note by the trial Court was that blood stained clothes of the accused were recovered from his custody and the accused could not offer any explanation in his statement. Even weapon was also recovered at the instance of the accused. The accused had made his statement under Section 313 Cr.P.C., but he had not explained as to how clothes got blood stains. The deceased being seen in the custody of the accused lastly thus, accused was required to to explain his position as not only he was last seen with deceased but they are husband and wife living together. The scene of occurrence is also the compound of the accused. Thus, in the statement of the accused, proper explanation was required to be given, but accused had not given any explanation. It has not been stated that he was out of station along with the truck. Thus, it becomes clear that there exists chain of circumstances to connect accused with the crime.

The argument of the learned counsel for the appellant that the appellant was not available on the scene of occurrence, thus falsely implicated in the case, cannot be accepted. The appellant was under an obligation to explain his position and the circumstances of death of deceased as he was seen last with the deceased. In the statement under Section 313, accused could not put forward any defense or explanation about the death of his wife. The accused has not even stated that he was away from the place on the day of occurrence. Thus, when the deceased died while in the custody of accused, absence of explanation, giving reasons of death connects the accused with the crime.

In the case reported in 2000 Crl.L.J.4047 (State of West Bengal v. Mir Mohammad Omar and Others), the Hon'ble Apex Court considered the issue and held :-

> **(30.)** The abductors have not given any explanation as to what happened to Mahesh after he was abducted by them. But the learned Sessions Judge after referring to the law on circumstantial evidence concluded thus:
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> "On a careful analysis and appreciation of the evidence I think that there is a missing link in the chain of events after the deceased

was last seen together with the accused persons and the discovery of the deadbody of the deceased at Islamia Hospital. Therefore, the conclusion seems irresistible that the prosecution has failed to establish the charge of murder against the accused persons beyond any reasonable doubt."

(31.) The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society wold be the casualty.

(32.) In this case, when prosecution succeeded in establishing the aforenarrated circumstances, the Court has to presume the existence of certain facts. Presumption is a course recognised by the law for the Court to rely on in conditions such as this.

(33.) Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such

inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reach a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

(34.) When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if accused would tell the Court what else happened to Mahesh at least until he was in their custody.

In the judgment, referred to above, the accused failed to give explanation about the death of the deceased as deceased was well in his custody. In the present matter also, deceased Kamla died while she was seen last with the accused and died at the residence itself. The argument of the learned counsel thus, cannot be accepted, because defense had not even come out with the case that on the day of occurrence, accused was away from the place of occurrence rather he was last seen with deceased and now looking to the recoveries of blood stained clothes of the accused, and even blood stained weapon being recovered, the chain of circumstances clearly shows that accused is connected with the crime.

It is also a fact that accused and deceased used to quarell with each other. The deceased sustained six injuries from a sharp weapon and out of which, one injury on the front side of neck, sufficient to cause death. Weapon 'Kassi" was recovered at the instance of the accused and the said weapon was also found blood stained, therefore, in these facts and circumstances, it cannot be said that the accused was falsely implicated in the case and there is no circumstantial evidence to connect accused with crime. Submission of report by Balwant Singh has been corroborated by independent witness. In the light of the facts mentioned above, the finding of the learned trial Court cannot be interfered as the same is based on reasonings.

The argument of the learned counsel for the appellant could not persuade us so as to interfere in the judgment of the trial Court. Therefore, we find no substance in the appeal.

In view of the facts mentioned above, the appeal preferred by the accused appellant, having no merit, same is dismissed. The accused is to serve the punishment awarded by the trial Court.

(MUNISHWARNATH BHANDARI),J. **(BHAGWATI PRASAD),J.**

Scd.